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November 15, 2023

Hon. Paul A. Engelmayer, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Via Electronic Filing

Re: Kitchen Winners NY Inc. v. Rock Fintek LLC, Case No. 22-cv-05276-PAE

Dear Judge Engelmayer:

This firm represents JNS Capital Holdings LLC and Joel Stern. I write briefly in regard to Rock Fintek's letter motion to quash the subpoena served on Bank of America.

The subpoena is not being withdrawn for two reasons. First, Rock Fintek arbitrarily limited its production to statements through the month of July 2021. Yet, Rock Fintek claims it has damages due to lost business for three years beyond the date of the breach of contract. In addition, its representatives have testified at length that their business records are entirely contained within their bank records. To the extent that Rock Fintek has lost business claims, we are entitled to review all of the bank records through the date that it ceased to conduct business.

The records provided to date indicate that Mr. Kato failed to maintain any separation between his personal and business accounts, and paid large amounts of personal expenses for his yacht, luxury vehicles and other items through the accounts of Rock Fintek. As such, it is impossible to limit the matter to the corporate accounts, and his accounts are also necessary. There is no privacy risk, as the documents will be attorney's eyes only per the Court's prior order. Mr. Kato also has no burden as the subpoena is directed to a third party that has not objected that the production is in any way burdensome.

The other reason that we have refused to withdraw the subpoena is that due to Mr. Kato's conduct in this matter, other litigation matters, and his general business dealings, my clients do not believe that they must take his word for the veracity of the records as produced. We are entitled to compare the records to those held by the bank to ensure that nothing was improperly modified or omitted. As such, we believe the motion to quash should be denied.

Notably, Rock Fintek did not oppose a similar subpoena to Wells Fargo Bank issued by Plaintiff, Kitchen Winners NY Inc. and that subpoena has in fact been fully answered by Wells Fargo, making us concerned that Rock Fintek and Mr. Kato are attempting to hide significant information in regard to the accounts at Bank of America.

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Very truly yours,

Avram E. Frisch
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Cc: All Counsel